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OVERVIEW OF TRANSPORTATION PROGRAMMING IN CALIFORNIA

Transportation programming is the commitment of transportation funds to be available over a period of several years to particular projects. Separate programming documents, prepared and adopted for somewhat different purposes, are required under State and Federal law.

State Transportation Improvement Program

Under California law, the State Transportation Improvement Program (STIP) and the State Highway Operations and Protection Program (SHOPP) are the two primary documents through which the California Transportation Commission (CTC) commits and allocates funds to particular projects. The Commission also allocates project funding for the Traffic Congestion Relief (TCR) program enacted in AB 2928 (2000), through which the Governor and Legislature have designated $4.9 billion in funding for 141 specific projects.

The STIP is a biennial program of projects adopted by the CTC and is funded from 3 sources, the State Highway Account, the Transportation Investment Fund, and the Public Transportation Account. The period of the STIP has changed with recent legislation: the 1996 STIP covered 7 years (ending FY 2002-03), the 1998 STIP covered 6 years (ending FY 2003-04), the 2000 STIP covered 4 years (also ending FY 2003-04), and the 2002 STIP covered 5 years (ending FY 2006-07). The 2004 STIP (ending FY 2008-09) and future STIPs will cover also cover 5 years.

The State Highway Account (SHA) includes revenues from State gasoline taxes and weight fees and Federal transportation revenues that are apportioned to the state. The STIP receives the portion of SHA revenue that remains after funding State transportation operations and the SHOPP.

The Transportation Investment Fund (TIF) was created by AB 2928 (2000) to receive transfers of the revenues derived from the state sales tax on gasoline. After a fixed amount is transferred each year from the TIF to the Traffic Congestion Relief Fund (TCRF) to support the TCR program, the remainder is divided, with 20% to the Public Transportation Account (half of which falls to the STIP), 40% directly to the STIP, and 40% for a subvention program to cities and counties for street and highway maintenance, rehabilitation, reconstruction, and storm damage repair. Under a refinancing plan enacted under AB 438 (2001), the transfers of sales tax revenue to the TIF and the transfers to the TCRF were suspended for 2 years (FY 2001-02 and FY 2002-03) while the statutory life of the TIF was extended by 2 years, from FY 2005-06 to FY 2007-08. During the 2-year suspension, the funding of the TIF subvention program was picked up by the State Highway Account. For the 2 extended years, the subvention program's 40% is redirected to the STIP. Proposition 42, approved in March 2002, made the TIF and the 20-40-40 split permanent, without the TCR program, beyond FY 2007-08.

The Public Transportation Account (PTA) is a designated trust fund for planning and mass transportation purposes, with revenues derived principally from the state sales tax, including the sales tax on diesel fuel and the 20% TIF transfer. The STIP receives the portion of PTA revenue that remains after the funding of various non-STIP appropriations, including the State Transit Assistance program, rail operations and planning.

The Commission may include projects in the STIP only if they are first nominated either by one of 48 regional agencies in its regional transportation improvement program (RTIP) or by Caltrans in its Interregional Transportation Improvement Program (ITIP). Since the enactment of SB 45 in 1997, the STIP has consisted of two broad programs, the regional program funded with 75% of new STIP funding and the interregional program funded from 25%. The 75% regional program is further subdivided by formula into county shares. County shares are available solely for projects nominated by regional agencies in their RTIPs. The Caltrans ITIP may nominate projects only for the interregional program. Under restricted circumstances, an RTIP may also recommend a project for funding from the interregional share. Where Caltrans and a regional agency agree, a project may be funded partially from a county share and partially from the interregional share.

County shares are available for a broad array of transportation improvement projects, including improving State highways, local roads, public transit, intercity rail, pedestrian and bicycle facilities, grade separations, transportation system management, transportation demand management, soundwalls, intermodal facilities, safety, and providing funds to match Federal transportation funds. Up to 5% of a county's share may be programmed for the regional agency's project planning, programming and monitoring (up to 1% for a regional agency that also receives Federal metropolitan planning funds). Generally, funds are available only for capital improvements, not for operating or maintenance costs.

The 25% interregional share is limited to State highway, intercity passenger rail, mass transit guideway, or grade separation projects that facilitate the interregional movement of people and goods. At least 60% of the interregional share (15% of the STIP) must be programmed for projects on the interregional road system, as defined in statute, and for intercity rail. At least 15% of that 60% (9% of the interregional program; 2.25% of the STIP) must be for intercity rail. Of the other 40% of the interregional share (10% of the STIP), 60% (at least 24% of the interregional program) must be programmed in the South 13 counties and 40% (at least 16% of the interregional program) in the North counties.

The programming of projects in the STIP is generally done without regard for the three State funding sources and the various categories of Federal transportation funds that flow through the State Highway Account. Most projects involve a mix of Federal and State funding. Although each funding source carries with it particular restrictions, there is generally enough flexibility to accommodate the variety of projects programmed. The primary constraint is to assure that enough projects qualify for Federal funding (e.g., meet Federal requirements for environmental clearance) to assure that all Federal funds are used.

STIP projects are programmed by fiscal year in each of four project components: (1) environmental and permits, (2) plans, specifications, and estimates, (3) right-of-way, and

(4) construction. Because, by law, the CTC does not allocate the funds used for Caltrans support costs, the STIP further breaks down costs for the right-of-way and construction components for Caltrans projects into separate subcomponents for support and capital outlay. Expenditures for STIP projects are drawn from budget appropriations in each of the 3 major state budget categories: capital outlay, support, and local assistance. All local agency projects are from local assistance, regardless of STIP component. Caltrans projects are from capital outlay (right-of-way and construction) and support (all 4 components).

The SHOPP is a biennial four-year programming document prepared by Caltrans that includes projects designed to maintain the safety and integrity of the state highway system. It does not include projects to add through lanes to increase capacity. Most of the projects are for pavement rehabilitation, bridge rehabilitation, and traffic safety improvements. Other projects include operational improvements (e.g., traffic signalization), roadside rehabilitation, and roadside rest areas. The SHOPP is approved by the CTC.

Allocation of Appropriations

Caltrans may expend State or Federal transportation funds on a programmed project or reimburse a local agency for its expenditures on a programmed project only when the funds have been appropriated by the Legislature. For local agency projects and for Caltrans capital outlay for right-of-way or construction, the use of appropriations is subject to allocation by the CTC. Appropriations for Caltrans support costs are not subject to Commission allocation. Local agencies may be reimbursed for expenditures they incurred for a project prior to the time of allocation, provided that (1) the expenditures were included in the STIP both at the time of expenditure and at the time of the allocation, (2) the expenditures were made less than 12 months prior to the allocation, and (3) the allocation designates that it includes reimbursement of the prior expenditures.

County and Interregional Shares

The Commission's programming of projects in the STIP is constrained by the formulas for county and interregional shares, which apply to discrete 4-year county share periods. As established in SB 45 (1997), the first county share period was a transition period ending in FY 2003-04, the last year of both the 1998 and 2000 STIPs. The next period is the 4-year period ending FY 2007-08. Thus the 2002 STIP added the first 3 years of a 4-year period, and the 2004 STIP will add the final year of that period and the first year of the following period.

For each period, the interregional share is 25% of the STIP. The 75% for county shares is first divided, with 60% (45% of the STIP) to the 13 counties in the South Group and 40% (30% of the STIP) to the North Group. Within each of the two county groups, the division of shares between counties is based 75% on population and 25% on State highway miles. The population is based on the latest census at the beginning of the county share period.

Under the STIP Guidelines, the Commission guarantees each region its current county share for each STIP in the same way that the statutes guarantee the county share for each 4-year period. For each STIP, the Commission programs the projects nominated by the region from its current county share unless it finds that the RTIP is inconsistent with the STIP Guidelines or is otherwise not a cost effective use of State funds. A region may also choose not to program all or a portion of its share, reserving it for a later STIP. In any case, whenever a county share is not programmed, for any reason, the unprogrammed balance is carried over and added to the county share available for the next period.

To the extent that some counties do not propose to program their current STIP county share, the Commission may use that STIP capacity to program above the current county share in other counties, in effect advancing STIP funds to those counties. By statute, this advancing of STIP share is generally limited by the county share for the 4-year period that extends beyond the current STIP period.

The primary exception is that, for counties in regions of less than 1 million population, the region may request and receive an advance of county share for future 4-year share periods. Such an advance for any county is limited to one project (which may be the largest STIP project in the county), up to 200% of the county share for the current 4-year period. On a statewide basis, these advances are limited by the overall programming capacity for the current STIP, as identified in the Fund Estimate.

In addition, any county may receive an advance of county share to the extent that it has programmed advance project development element (APDE) projects. For each STIP, each county is allowed a share for APDE projects, projects that include only project development activities. County APDE shares are calculated by applying the county share formula to 25% of the statewide estimate of funding to be available for the 2 years beyond the current STIP period (without regard to the 4-year county share periods). While APDE projects do count against county share, their programming is constrained only by the separate APDE fund estimate, not by the regular STIP programming capacity estimate.

The interregional share may also receive an advance, limited only by the programming capacity for the current STIP, made available by county shares left unprogrammed, and by the APDE interregional share.

As a general rule, the amount counted against a county or interregional share is the amount programmed or allocated. The statutes say that, for county and interregional share purposes, project costs shall not be changed to reflect construction contract awards, actual right-of-way purchase costs, or differences that are within 20% of the amount programmed for actual project development costs. One exception is that if the final right-of-way estimate is less than 80% or greater than 120% of the amount programmed, the amount is to be adjusted for the final expenditure estimate. Another exception is that the Commission may adjust its project allocation if Caltrans reports a contract award that is less than 80% of the engineer’s estimate. Basing county and interregional shares on programming and allocations makes share accounting much simpler and timelier than it would be if it applied to actual expenditures. It can also provide an incentive for accuracy in cost estimating.

The language of the statutes with regard to share accounting uses terminology that applies specifically to Caltrans projects. In practice, the general rule must be applied differently to local agency projects than to Caltrans projects because local agencies may receive STIP funds only if they are allocated, while all Caltrans costs must be paid by the State in any case, regardless of programming. The CTC does not allocate funds for Caltrans support work in any component. For right-of-way, the Commission allocates funds only on an annual basis, not on a project basis. For construction, the Commission has historically allocated funds, but with a delegated level of flexibility to cover small increases at award (Resolution G-12). Only for larger increases does the Commission make individual supplemental allocations.

For Caltrans projects, the statutory rules apply. Construction cost increases covered within the G-12 delegation are not counted, though supplemental allocations are. Cost decreases at award do not affect the count unless Caltrans has reported a contract award less than 80% of the engineer's estimate and the Commission has adjusted the project allocation accordingly. For right-of-way, the amount counted is the amount programmed, unless the final right-of-way estimate is less than 80% or more than 120% of the amount programmed. For project development, the amount counted is the amount programmed, unless the final cost differs by more than 20%, upward or downward.

For local projects, the amount counted for all components is simply the amount programmed or allocated. No reduction from an allocated amount is counted. To maintain a level of flexibility comparable to Caltrans projects, the Commission's guidelines do permit local agencies to expend funds allocated for the two project development components interchangeably and to expend up to 20% of the amounts allocated each for project development, right-of-way, or construction on another component.

Timely Use of Funds

By statute, as a general rule, STIP funds may be allocated by the CTC for each project component only until the end of the fiscal year for which it is programmed in the STIP, and the funds are available for expenditure during that fiscal year and the following 2 fiscal years. In addition, the Commission's STIP Guidelines specify that funds allocated for construction or acquisition of equipment must be encumbered by the award of a contract within 12 months of the date of allocation. If any of these deadlines is not met, the funds are no longer available for the project. The Commission may extend a deadline if it finds "that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies the extension." The extension is not to exceed the period of delay directly attributed to the extraordinary circumstance and in no event may exceed 20 months.

In practice, the timely use of funds rule applies to all components for local projects and only to construction for Caltrans projects. That is because Caltrans support costs are not subject to allocation by the Commission and because Caltrans right-of-way is not allocated on a project-by-project basis.

Where a project fails to meet the deadline for allocation, the project is dropped from the STIP. Any county share applied to the project is lost for that county share period. However, that share is carried over and becomes available to the county again in the following 4-year county share period. Where a project fails to meet an award or expenditure deadline, the allocation ceases and any remaining funds from the allocation are no longer available. As with any other project, no adjustment is made to the county share for any unexpended portion of the allocation.

Biennial Programming Process

The biennial programming process begins with the development and adoption of the Fund Estimate. Caltrans is required by statute to prepare a proposed Fund Estimate, following a method determined by the CTC in consultation with the Department and regional agencies. Caltrans is required to submit this proposed Fund Estimate to the CTC by July 15 of each odd-numbered year, and the Commission is required to adopt the Fund Estimate by August 15. The Fund Estimate is to be based on existing statute and is required to include a breakdown by fiscal year and by county (i.e. including county share status).

STIP project nominations are made through the regional RTIPs and the Caltrans ITIP, which are due to the CTC by December 15 of each odd-numbered year. After receiving these project nominations, the Commission holds public hearings, including at least one in northern California and one in southern California. After the hearings, the Commission staff prepares its recommendations. The staff is required to make these recommendations available to Caltrans and the regional agencies at least 20 days prior to STIP adoption. The Commission is required to adopt the STIP and submit it to the Governor and the Legislature by April 1 of each even-numbered year.

The statutes permit the Commission to postpone the adoption of the Fund Estimate for up to 90 days if it finds that legislation pending before the Legislature or the United States Congress may have a significant effect. The Commission is further authorized to amend the Fund Estimate prior to March 1 to account for unexpected revenues or other unforeseen circumstances. In that case, the Commission must extend the dates for submittal of the RTIPs and ITIP and for STIP adoption.

The development of the biennial SHOPP occurs during the same period. Caltrans is required to submit the SHOPP to the CTC by January 31 of each even-numbered year, after first submitting a draft to regional agencies for review and comment. The Commission is required to approve the SHOPP and submit it to the Governor and Legislature by April 1 of each even-numbered year.

State Programming Outside the STIP Process

In addition to the programs described above, the Commission programs and allocates several other sources or types of transportation funding.

Transportation Congestion Relief (TCR) Program. The Transportation Congestion Relief Act, enacted as part of AB 2928 (2000), created the TCR program with $4.91 billion designated for 141 specific projects identified in the Act. The funding for the TCR program is a fixed amount set by statute. It is funded through the Traffic Congestion Relief Fund (TCRF), which received initial transfers from the General Fund and is to receive continuing annual transfers from the TIF for FY 2003-04 through FY 2007-08. For FY 2001-02 and FY 02-03, the TCRF received loans from the Public Transportation Account, which are to be repaid by FY 2007-08, and the State Highway Account, to be repaid by FY 2006-07.

Funding for the TCR program is allocated by the CTC, though not programmed through the STIP. By statute, the CTC first approves project applications, an action similar to STIP programming in that it specifies project scope, cost, and schedule commitments by project component. As required by statute, all project lead applicant agencies submitted initial project applications by July 2002. Under limited circumstances, the Commission may approve applications for substitute or alternative projects. This may occur, for example, if the lead agency and the Commission agree that the designated project is delayed by external factors that are not likely to be removed within a reasonable amount of time. The CTC is also permitted to redirect previously allocated TCR funds to a different project if it finds that the lead agency is not pursuing the project work diligently.

In most cases, the statutorily designated TCR funding for a project is sufficient to fund only a portion of total project costs. For this reason, the availability of TCR funding has leveraged STIP programming, influencing STIP project selection priorities.

<u>Federal special projects (demonstration) funding</u>. From time to time, the Congress makes special funding (sometimes called demonstration funding) available for designated projects in Federal transportation reauthorization or appropriation acts. While the CTC has virtually no discretion over the use of these funds, they can play a significant part in STIP programming because they generally fund only a small part of a project's total cost. The availability of these funds is often used to leverage the programming of STIP funds or regionally programmed Federal funds.

<u>Proposition 116</u>. This 1990 initiative enacted the Clean Air and Transportation Improvement Act (CATIA), with a $1.99 billion general obligation bond measure. Although these funds are allocated by the CTC, they are not programmed through the regular STIP process. The terms of the proposition itself designated specific amounts for specific counties, corridors, projects, or project categories, including $1.857 billion for rail purposes. The CTC's Proposition 116 guidelines call for a two-step procedure to funding. The first is project approval, which represents a commitment of funds to a particular project and is analogous to programming. The second step is project allocation. As of January 2003, $182.5 million remained to be programmed for rail and other purposes, including $121.4 million designated for the City of Irvine for construction of a guideway demonstration project. Other remaining earmarks are for the counties of Marin, Monterey, Santa Cruz, and Sonoma, and the construction of the State Museum of Railroad Technology.

<u>Environmental Enhancement and Mitigation (EEM)</u>. Originally created in 1989 in conjunction with a major restructuring of State programming, the Environmental Enhancement and Mitigation (EEM) program is funded with $10 million per year transferred from the State Highway Account to the Environmental Enhancement and Mitigation Program Fund. Although the CTC allocates funds to individual projects, grant proposals are evaluated and an annual list is developed by the Resources Agency.

Aeronautics Program. The Aeronautics program is a biennial three-year program that includes the programming of projects to be funded from the Aeronautics Account, which is derived from taxes on aviation gasoline and general aviation jet fuel. Projects are for the acquisition and development of local general aviation airports. The projects are selected on the basis of priorities determined in accordance with evaluation procedures adopted by the CTC.

Transportation Enhancement Activities (TEA). A portion of the Federal transportation funds apportioned to the state are available for use only on Transportation Enhancement Activities (TEA) projects, as defined in the Federal law. TEA purposes include bicycle and pedestrian facilities and various types of projects designed to preserve or enhance transportation facilities (excluding mitigation measures ordinarily required as part of transportation improvement projects). Examples have included extraordinary landscaping, land acquisition to preserve views, and historic rail station restoration. State law does not identify a separate programming mechanism for Federal TEA funds. Rather than include TEA funds in the STIP, the CTC has established a separate TEA program that distributes 75% of the funds to regional agencies, in accordance with the STIP county share formula, for direct regional programming. The remaining 25% is reserved for State programming in three ways: the SHOPP (for Caltrans enhancements to the State highway system), a Statewide Transportation Enhancements (STE) program, and a Conservation Lands program (the latter two administered by the Resources Agency, similar to the EEM program).

Regional Programming of Federal Funds

Under State law, two categories of Federal funds are programmed directly by regional agencies and are not part of the regular STIP programming process. These include funds made available under the Regional Surface Transportation Program (RSTP) and the Congestion Mitigation and Air Quality (CMAQ) program. Projects may be on any highway or transit system, State or local.

Under Federal law, RSTP funds are apportioned by population and restricted to expenditure within 12 substate areas, one for each of the 11 large urbanized areas and one for the remainder of the state. Under State law, RSTP funds are apportioned by population to each county. They may be used for virtually any road or transit purpose except transit operating costs.

Under Federal law, CMAQ funds apportioned to the state may be expended anywhere in the state that is within an air quality nonattainment area. Under State law, CMAQ funds are apportioned to counties under a formula based on population weighted by the degree of nonattainment for ozone, carbon monoxide, and particulate matter smaller than 10 microns (PM-10). CMAQ funds are available for projects designated as transportation control measures (TCMs) in the State Implementation Plan (SIP) for air quality in the area.

Under State law, the RSTP and CMAQ funds apportioned to regions are subject to their own timely use of funds rule. Funds not used within a 3-year apportionment period may be redirected by the CTC for use on other transportation projects in the state.

Federal Programming Documents

Federal law calls for a different set of programming documents. Each of the 15 metropolitan planning organizations (MPOs) in California is required to prepare and adopt a transportation improvement program (TIP, Federal TIP or FTIP). This is not to be confused with the RTIP required under State law to nominate projects for the STIP. Caltrans is also required to prepare a statewide Federal TIP (FSTIP), not to be confused with the STIP adopted by the CTC. The FSTIP incorporates each of the 15 MPO FTIPs and also covers the portions of the State that are not within the area of an MPO.

The FTIPs and FSTIP must incorporate all projects to be funded with Federal funds, whether programmed through the State STIP or SHOPP, through the regional RSTP or CMAQ programming, through the TEA program, or with Federal demonstration funds. For CTC-programmed projects, the State programming process defines a decision-making process, while the Federal process establishes compliance with Federal law. The most important programming requirements of Federal law are that the Federal TIPs must include evidence that they are constrained to the amount of funds reasonably expected to be available for a period of at least three years; they must include project priorities, at least on a fiscal year basis; and they must be demonstrated to be in conformity with the air quality plan for the area. Federal funds will not be obligated for a project that is not included in a federally approved FTIP and FSTIP.

Federal law does not prescribe specific dates by which FTIPs and the FSTIP must be prepared, adopted, or approved, except to specify that the an FTIP "shall be updated [and approved] at least once every 2 years" and that the FSTIP "shall be reviewed and approved no less frequently than biennially." State law, however, requires that MPOs submit their FTIPs to Caltrans by August 1 of each even-numbered year and that Caltrans submit the FSTIP to the Federal Government by October 1 of each even-numbered year.

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